

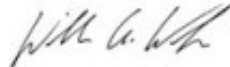
Miller died; Mrs. Miller was appointed personal representative of his estate on December 19, 2012. Letters Testamentary, Ex. B, DE-168-2. Mrs. Miller now seeks to substitute herself for her husband. Further, she seeks to amend the complaint to reflect his death and to add a claim for wrongful death.

Rule 15(a) of the Federal Rules of Civil Procedure permits amendment to pleadings by leave of court. “The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Plaintiff contends that permitting the amendment will not affect the trial of this case. For good cause shown, Plaintiff’s motion to amend (DE-169) is GRANTED.

Rule 25(a)(1) of the Federal Rules of Civil Procedure states that “[i]f a party dies and the claim is not thereby extinguished, the court may order substitution of the proper party.” The survival of causes of action is governed by N.C. Gen. Stat. § 28A-18-1: “(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of his estate.” Subsection (b) exempts only causes of action for libel and slander, false imprisonment, and “causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.” N.C. Gen. Stat. § 28-18-1(b). Further, N.C. Gen. Stat. § 28A-18-3 provides that “[a]ll actions and proceedings brought by or against personal representatives or collectors upon any cause of action or right to which the estate of the decedent is the real party in interest, must be brought by or against them in their representative capacity.” Thus, the personal injury action of Robert Wesley

Miller survives his death and Plaintiff Jane E. Miller, as his personal representative, is the appropriate party to maintain the action, including an action for wrongful death. *See Daniels v. Amtrak*, No. 5:11-CV-290-BO, 2011 U.S. Dist. LEXIS 135038, at *3-4 (E.D.N.C. Nov. 22, 2011) (noting that in North Carolina, a wrongful death action for damages may only be brought the personal representative of the decedent). Accordingly, Plaintiff's motion to substitute (DE-168) is GRANTED.

DONE AND ORDERED in Chambers at Raleigh, North Carolina on Tuesday, March 12, 2013.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE